

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IRON MOUNTAIN INFORMATION	)	
MANAGEMENT, INC.,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 05-10979-DPW
v.	)	
	)	
L&L TEMPORARIES, INC., ET AL.,	)	
	)	
Defendants.	)	
	)	
FLEXIBLE FUNDING, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION No. 05-12071-DPW
	)	
IRON MOUNTAIN INFORMATION	)	
MANAGEMENT, INC.,	)	
	)	
Defendant and Third-Party	)	
Plaintiff,	)	
	)	
v.	)	
	)	
L&L TEMPORARIES, INC. and	)	
SUSAN YERDON,	)	
	)	
Third-Party Defendants.	)	

**PLAINTIFF’S REPLY TO THE COUNTERCLAIM OF  
INTERPLEADER-DEFENDANT FLEXIBLE FUNDING, LLC**

Plaintiff Iron Mountain Information Management, Inc. (“Iron Mountain”), by its  
attorneys, Sullivan & Worcester LLP, hereby replies the Counterclaim, dated November 28,

2005 (the “Counterclaim”), of interpleader-defendant Flexible Funding, LLC (“Flexible Funding”), as follows:

1. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.

2. Admitted.

3. The allegations in the third and fourth sentences of paragraph 3 contain conclusions of law to which no response is required. Iron Mountain denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations in such paragraph 3.

4. Denies the allegations in paragraph 4, except Iron Mountain admits that L&L Temporaries, Inc. (“L&L”) did provide temporary employment services, *i.e.*, temporary labor, for Iron Mountain in the Greater Boston area.

5. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5, except Iron Mountain admits that it received invoices from L&L for temporary labor services provided to Iron Mountain in the Greater Boston area.

6. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6.

7. Denies the allegations in paragraph 7 of the Counterclaim, except Iron Mountain admits that on or about March 21, 2003, it received, at an Iron Mountain records center located at 32 George Street, Boston, Massachusetts, a letter purporting to be from Flexible Funding in the form attached to the Counterclaim as Exhibit B. In further response to paragraph 7, Iron Mountain states that such letter is a document that speaks for itself and, therefore, Iron Mountain

denies any allegations of such paragraph 7 to the extent that they purport to vary, contradict, amend, supplement or are otherwise inconsistent with the express terms of the letter.

8. Denies the allegations in paragraph 8, except Iron Mountain admits that, pursuant to an agreement with and instructions from L&L, Iron Mountain remitted certain amounts otherwise payable to L&L directly to Flexible Funding.

9. Denies the allegations in paragraph 9 of the Counterclaim, except Iron Mountain admits that on or about October 22, 2003, it received, at an Iron Mountain records center located at 32 George Street, Boston, Massachusetts, a letter purporting to be from Flexible Funding in the form attached to the Counterclaim as Exhibit C. In further response to paragraph 9, Iron Mountain states that such letter is a document that speaks for itself and, therefore, Iron Mountain denies any allegations of such paragraph 9 to the extent that they purport to vary, contradict, amend, supplement or are otherwise inconsistent with the express terms of the letter.

10. Denies the allegations in paragraph 10 of the Counterclaim, except admits that (a) by two (2) interrelated written agreements dated April 20, 2004 (the "Contracts"), Iron Mountain and L&L agreed, among other things, that L&L would provide temporary labor services to Iron Mountain; and (b) pursuant to the Contracts, L&L and Iron Mountain agreed that Iron Mountain's payments would be directed to:

L&L Temporaries, Inc.  
P.O. Box 1300  
Suisun City, CA 94585-4300  
syerdon@lnlassociates.com  
(617) 423-4955

Iron Mountain denies any allegations in paragraph 10 to the extent that they purport to vary, contradict, amend, supplement or are otherwise inconsistent with the terms of the Contracts.

11. Denies the allegations in paragraph 11 of the Counterclaim, except Iron Mountain admits that, on or about December 10, 2004, it received, at an Iron Mountain records center located at 32 George Street, Boston, Massachusetts, a letter purporting to be from Flexible Funding in the form attached to the Counterclaim as Exhibit D. In further response to paragraph 11, Iron Mountain states that such letter is a document that speaks for itself and, therefore, Iron Mountain denies any allegations in such paragraph 11 to the extent that they purport to vary, contradict, amend, supplement or are otherwise inconsistent with the express terms of the letter.

12. The allegations in the second sentence of paragraph 12 contain conclusions of law to which no response is required. Iron Mountain denies the remaining allegations in paragraph 12, except admits that (a) by electronic mail dated December 1, 2004, from L&L's President, Yerdon, L&L informed Iron Mountain that its accounts financing agreement with Flexible Funding had been terminated and that all payments should be made to L&L's office on Tremont Street in Boston, Massachusetts; (b) as of January 12, 2005, L&L's invoices to Iron Mountain stated that payments were to be remitted to L&L's Tremont Street office in Boston, Massachusetts; and (c) and Iron Mountain remitted certain payments to L&L as L&L instructed.

13. The allegations in paragraph 13 contain conclusions of law to which no response is required. To the extent that paragraph 13 contains allegations of fact to which a response is required, Iron Mountain denies any liability to Flexible Funding.

14. Denies the allegations in paragraph 14, except Iron Mountain admits that Flexible Funding has requested that Iron Mountain remit money to Flexible Funding and that Iron Mountain has refused Flexible Funding's request. In further response to paragraph 14, Iron Mountain (a) states that it has escrowed certain amounts as described in its First Amended Complaint for Interpleader, Declaratory Judgment and Injunctive and Compensatory Relief in Civil Action No. 05-10979-DPW, and (b) denies that it owes any money to Flexible Funding.

15. In response to paragraph 15 of the Counterclaim, Iron Mountain incorporates as if set forth in full herein its responses paragraphs 1 through and including 14 thereof.

16. Denies the allegations in paragraph 16, except denies having knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence thereof.

17. The allegations in paragraph 17 contain conclusions of law to which no response is required. To the extent that paragraph 17 contains allegations of fact to which a response is required, Iron Mountain denies the allegations in that paragraph.

18. Denies the allegations in paragraph 18, except Iron Mountain admits that Flexible Funding has requested that Iron Mountain remit money to Flexible Funding and that Iron Mountain has refused Flexible Funding's request. In further response to paragraph 18, Iron Mountain (a) states that it has escrowed certain amounts as described in its First Amended

Complaint for Interpleader, Declaratory Judgment and Injunctive and Compensatory Relief In Civil Action No. 05-10979-DPW, and (b) denies that it owes any money to Flexible Funding.

### **Affirmative Defenses**

#### **First Affirmative Defense**

The Counterclaim fails in various ways to state a claim upon which relief may be granted against Iron Mountain.

#### **Second Affirmative Defense**

If Iron Mountain owes any money to Flexible Funding, which it denies, such sums have already been paid.

#### **Third Affirmative Defense**

Flexible Funding is barred from recovery herein by operation of the doctrine of estoppel.

#### **Fourth Affirmative Defense**

Flexible Funding is barred from recovery against Iron Mountain by operation of the doctrine of laches.

#### **Fifth Affirmative Defense**

Flexible Funding is barred from recovery against Iron Mountain by operation of an accord and satisfaction.

#### **Sixth Affirmative Defense**

Flexible Funding has waived in whole or in part, any claims asserted against Iron Mountain in the Counterclaim.

**Seventh Affirmative Defense**

Flexible Funding has failed to comply with the requirements of Section 9-405(a) of the Massachusetts Uniform Commercial Code, Mass. Gen. Laws c. 106, § 9-405(a), and, by reason thereof, is barred from seeking any recovery against Iron Mountain.

**Prayers for Relief**

**WHEREFORE**, Iron Mountain requests that this Court:

1. Dismiss the Counterclaim as against it in its entirety, with prejudice;
2. Award Iron Mountain its costs and expenses of action, including reasonable attorneys' fees and disbursements; and
3. Award Iron Mountain such further relief as is just.

**IRON MOUNTAIN INFORMATION  
MANAGEMENT, INC.**

By its attorneys,

December 19, 2005

/s/ Samuel A. Miller  
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